

LICENSE AGREEMENT
BY AND BETWEEN THE CITY OF FRISCO, TEXAS AND HOPE PARK
(Frisco Commons/Bicentennial Park)

This **LICENSE AGREEMENT** ("Agreement") is made by and between **CITY OF FRISCO, TEXAS**, a Texas home-rule municipality ("Licensor") and **HOPE PARK FRISCO**, a Texas not-for-profit foundation ("Licensee") in furtherance of the park improvements project being conducted within "Frisco Commons" and "Bicentennial Park" on the terms and conditions set forth herein. Licensor and Licensee are individually and collectively referred to herein as "Party" or "Parties".

RECITALS

WHEREAS, Licensor is the owner of the park known as "Frisco Commons", consisting of 60.464± acres, situated in the Clayton Rogers Survey, Abstract No. 764, Tract 25, Frisco, Collin County, Texas, and located at 8000 McKinney, Road, Frisco, Texas ("Frisco Commons"); and

WHEREAS, Licensor is the owner of the park known as "Bicentennial Park", consisting of 8.684± acres, situated in the Bi-Centennial Addition, Block 1, Lot 2, Frisco, Collin County, Texas and located at 9349 Sunset Drive, Frisco, Texas ("Bicentennial Park"); and

WHEREAS, Frisco Commons and Bicentennial Park are collectively referred to herein as "Parks"; and

WHEREAS, Licensee desires to, at no cost to Licensor, exercise certain rights, privileges, duties, obligations and services (collectively, "Licensee's Obligations"), subject to the Construction Project Manager's (hereinafter defined) duties and authority described herein, within, upon and/or adjacent to the Parks for the purpose of, among other things, coordinating, facilitating, managing and causing the, among other things: (i) demolition, construction, erection, renovation, removal, installation, participation in and/or replacement of certain improvements, and any and all other matters related thereto, ("Park Improvements") contained within Frisco Commons in the areas commonly referred to as "Friendship Park" ("Friendship Park") and "Hope Park" ("Hope Park"), including but not limited to, the use of any and all supplies, equipment, materials, tools and/or any other items needed for the Park Improvements and/or any and all other matters related and incident thereto; (ii) solicitation of and coordination of volunteers to provide the labor for the Park Improvements, including, without limitation, securing the fully executed Release of Liability Forms ("Volunteer Releases") from each volunteer, daily, and delivering the same to Licensor's Representative at the end of each work day, the provision of any meals and drinks, as solely determined by Licensee, to volunteers; (iii) setting up of tents, installation of security fencing, provision of an office trailer, installation of light towers, provision of two (2) recreational vehicles for housing persons providing oversight and security over the Project while no activity is being conducted in conjunction with the Park Improvements, provision of storage containers and facilities for housing, among other things, any and all equipment, supplies, materials and tools, ensuring the Parks are kept clean, safe, neat and secure at all times; (iv) parking within the designated areas, accessing, assembly, meeting, gathering, recreating and/or the use of the permanent and/or

temporary facilities, improvements, buildings and/or structures; (v) procuring all supplies, equipment, materials, tools and another items needed for the Park Improvements, save and except the materials and supplies for the Park Improvements located within Friendship Park, which will be provided at Licensor's expense; (vi) securing all tools, equipment and labor needed for the Park Improvements; and (vii) returning any and tools and/or equipment secured for the Park Improvements, returning the same to the respective owners in the same condition they were in when Licensee obtained the same; should such tools and/or equipment be damaged, misplaced and/or stolen, Licensee shall, at its sole cost and expense, be responsible for repairing and/or replacing said tools and/or equipment to the owners in the same or better condition upon Licensee gaining possession of the same (collectively, "Project"); and

WHEREAS, Licensee acknowledges and agrees that the Park Improvements located within Friendship Park shall be in conformity with the plans and specifications contained within the construction documents ("Friendship Park Construction Documents") provided by Leathers Associates, dated January 23, 2011, as may be amended, modified and/or altered, only by the Construction Project Manager, with the written consent of Licensor's Representative (hereinafter defined), while onsite during the construction of the Park Improvements; and

WHEREAS, Licensee further acknowledges and agrees that the Park Improvements located within Hope Park shall be in conformity with the plans and specifications contained within the construction documents ("Hope Park Construction Documents") provided by Leathers Associates, dated February 4, 2013, and Jones and Carter, Inc., dated March 2013, as may be amended, modified and/or altered, only by the Construction Project Manager, with the written consent of Licensor's Representative, while onsite during the construction of the Park Improvements; and

WHEREAS, the Friendship Park Construction Documents and Hope Park Construction Documents are collectively referred to herein as the "Construction Documents"; and

WHEREAS, the Park Improvements shall become the sole property of Licensor upon its final acceptance of the same in accordance with this Agreement at which time all right, title and interest in and to the Park Improvements shall vest with Licensor; and

WHEREAS, Licensor has investigated and determined that it is the best interest of the City of Frisco and its citizens to enter into this Agreement and provide the license described herein upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Licensor and Licensee agree as follows:

1. **Findings Incorporated.** The, among other things, representations, acknowledgements, agreements, covenants, conditions, recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement as if set forth verbatim and adopted as findings of Licensor and the authorized representative of Licensee.

2. **Licensee's Obligations/Construction of Park Improvements/Volunteer**

Releases. (a) Licensee's Obligations shall be as described and defined in the Recitals. Licensee shall have the right to construct the Park Improvements in conjunction with the Project, which right shall include the right of ingress and egress on the Property and on any adjacent real estate owned by Licensor, and to do and take all actions on the Property as shall be necessary and appropriate in furtherance of such construction. Licensee shall also be required to obtain: (i) from the Construction Project Manager a sworn affidavit, in a form reasonably approved by Licensor and addressed to Licensor, acknowledging Licensor's right to rely on the same, providing that the Park Improvements have been completed, including any "punch list" items, in strict accordance with the Construction Documents, as amended, modified and/or altered, as authorized herein, and any other required representations reasonably required by Licensor ("Construction Project Manager's Affidavit"); and (ii) written evidence, in a form(s) reasonably acceptable to Licensor, that all of the construction costs, as well as any other costs and/or fees, associated with the Park Improvements and the Project have been paid in full by Licensee, save and except those supplies and materials purchased by Licensor as described in Paragraph 3 below. Such evidence may include, but shall not be limited to, Affidavits of Payment/Affidavits as to Debts and Liens, statutory forms of the Unconditional Waiver and Release on Final Payment, and any other evidence reasonably required by Licensor ("Evidence of Payment(s)"). Licensee shall tender the Construction Project Manager's Affidavit and Evidence of Payment(s) to Licensor before Licensor finally accepts the Park Improvements, but in no event, shall such documents be tendered to Licensor any later than April 30, 2013.

(b) Licensee acknowledges and agrees that all the Park Improvements shall be in conformity with the Construction Documents and shall, among other things, conform with the current safety and accessibility guidelines known as ASTM F1487, CPSC Pub. No. 325 and ADA Accessibility Guidelines for Play Areas ("Regulations").

(c) Licensee shall be solely responsible for securing the Volunteer Releases for each volunteer, including any minor volunteers, daily and for each shift, in the forms attached hereto as **Exhibit "A"** and incorporated herein for all purposes. Licensee shall tender the Volunteer Releases to Licensor's Representative no later than the end of each day work is performed in conjunction with the Park Improvements. Under no circumstance shall any volunteer be allowed to participate in the Project without the executing the required Volunteer Release form.

3. **Licensor's Obligations/Designation of Licensor Representative/Duties.** (a)

Licensor's only obligations under this Agreement and the Project are to provide, at its sole cost and expense, the supplies and materials for the Park Improvements located within Friendship Park; and restroom facilities, utilities and trash receptacles, all of which currently exist within the Parks.

(b) Dudley Raymond, or his authorized designee, is hereby designated as Licensor's representative ("Licensor's Representative"). Licensor's Representative is hereby charged with general oversight of the Project, construction methods used and coordination with the Construction Project Manager while the Project is in progress.

4. **Designation of Construction Project Manager/Duties.** (a) The Parties hereby designate Leathers Associates as the construction project manager ("Construction Project Manager").

(b) The Parties agree that the Construction Project Manager shall be charged with orchestrating and overseeing the Park Improvements; oversight of the construction methods utilized to ensure compliance with the Construction Documents; the authority to amend, modify and/or alter the Construction Documents and/or construction methods used onsite, if, in the professional opinion of the Construction Project Manager and after conferring with Licensor's Representative, such amendment, modification and/or alteration is necessary to ensure conformance with the Regulations and the safety and reliability of the Park Improvements; the authority to alter, adjust, modify, reject and/or require the removal and/or replacement of any work performed in conjunction with the Park Improvements; providing necessary inspections during the construction of the Park Improvements; when the Park Improvements are substantially complete, performing an inspection in order to create any "punch list" items necessary to complete the Park Improvements; and determining when the Park Improvements have been completed in strict conformance with the Construction Documents, as amended, modified and/or altered as provided herein.

5. **Licensor's Determination of Legal Compliance/Licensee's Ability to Negotiate.** Licensor has determined that the activities of Licensee on the Property are private in nature and are not subject to the requirements of Chapter 2267 of the Texas Government Code or any public procurement rules or regulations enacted by Licensor. Licensee shall be permitted to negotiate and utilize a private construction contract for its activities in constructing the Park Improvements, subject to Licensor's prior review and written approval, and Licensee shall be required to obtain payment and performance bonds in an amount equal to any contract for such construction of the Park Improvements. Under no circumstance shall Licensee be authorized to commit Licensor to any obligation, financial or otherwise, unless expressly authorized herein.

6. **Licensee's Insurance Requirements.** Licensee shall procure and maintain throughout the Project and until Licensor finally accepts the Park Improvements, insurance in accordance with this Paragraph. Licensee shall deliver the certificate of insurance evidencing all of the requirements set forth herein simultaneously with its execution of this Agreement and deliver of the same to Licensor.

(a) All insurance and certificate(s) of insurance shall contain the following provisions:

- (i) Name Licensor, its officers, agents, representatives and employees, as additional insureds as to all applicable coverage with the exception of workers' compensation insurance.
- (ii) Provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance on the face of the ACORD.

(iii) Provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(iv) Include all endorsements applicable to each policy.

(b) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

(c) General Liability insurance for personal injury (including death) and property damage with a minimum of \$1 Million Dollars per occurrence and \$2 Million Dollars aggregate, including coverage for advertising injury and products coverage.

7. **INDEMNIFICATION.** (A) IN CONSIDERATION OF LICENSOR ENTERING INTO THIS AGREEMENT AND ALLOWING LICENSEE THE RIGHTS AND PRIVILEGES CONTAINED HEREIN, LICENSEE DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS LICENSOR FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF LICENSOR PRIOR TO THE EXECUTION OF THIS AGREEMENT AND/OR AS A RESULT OF ACTIONS TAKEN AND/OR NOT TAKEN BY LICENSOR IN REGARD TO THE PROJECT AND/OR TAKING AND/OR NOT TAKING ANY ACTION WITH REGARD TO THE SUBJECT MATTER OF THIS AGREEMENT (HEREINAFTER "**CLAIMS**"). LICENSEE IS EXPRESSLY REQUIRED TO DEFEND LICENSOR AGAINST ALL SUCH CLAIMS. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

(B) IN ITS SOLE DISCRETION, LICENSOR SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY LICENSEE IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY LICENSOR, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY LICENSOR IN WRITING. LICENSOR RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, LICENSOR IS UNDER NO OBLIGATION TO DO SO. ANY SUCH OBLIGATION BY LICENSOR IS NOT TO BE CONSTRUED AS A WAIVER OF LICENSEE'S OBLIGATION TO DEFEND LICENSOR OR AS A WAIVER OF LICENSEE'S OBLIGATION TO INDEMNIFY LICENSOR PURSUANT TO THIS LETTER AGREEMENT. LICENSEE SHALL RETAIN LICENSOR-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF LICENSOR'S WRITTEN NOTICE THAT LICENSOR IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS LETTER AGREEMENT. IF LICENSEE FAILS TO RETAIN DEFENSE COUNSEL WITHIN SUCH TIME PERIOD, LICENSOR SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND LICENSEE SHALL BE LIABLE FOR ALL COSTS INCURRED BY LICENSOR. **THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LETTER AGREEMENT.**

8. **No Joint Venture.** It is acknowledged and agreed by and among the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. Licensor, past, present and future officers, elected officials,

employees and agents of Licensors do not assume any responsibilities or liabilities to any third party in connection with the Park Improvements and/or Project contemplated by this Agreement. In addition, Licensee acknowledges and agrees that there shall be no recourse against any of the aforesaid parties, who shall incur no liability in respect to any claims based upon or relating to the Agreement.

9. **Notices.** Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via electronic mail or a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Licensors, addressed to it at:

City of Frisco
ATTN: George Purefoy
6101 Frisco Square Blvd.
Frisco, Texas 75034
Telephone: (972) 292-5106
Electronic Mail: gpurefoy@friscotexas.gov

With a copy to:

Abernathy, Roeder, Boyd & Joplin P.C.
ATTN: Rebecca Brewer
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Electronic Mail: rbrewer@abernathy-law.com

If to Licensee, addressed to it at:

ATTN: _____

Telephone: (____) _____ - _____
Electronic Mail: _____

With a copy to:

ATTN: _____

Telephone: (____) ____ - _____
Electronic Mail: _____

10. **Attorney's Fees.** In any legal proceeding brought to enforce the terms of this Agreement, the prevailing Party may recover its reasonable and necessary attorney's fees from the non-prevailing Party as permitted by Section 271.153 of the Texas Local Government Code, as it exists or may be amended.

11. **Licensee's Warranties/Representations.** All warranties, representations and covenants made by Licensee to Licensor in this Agreement or in any certificate or other instrument delivered by Licensee to Licensor under this Agreement shall be considered to have been relied upon by Licensor and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by Licensor.

12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the Parties hereto.

13. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

14. **Consideration.** This Agreement is executed by the Parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

15. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail signature will also be deemed to constitute an original if properly executed.

16. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective Parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the Party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the Party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date of this Agreement.

17. **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such

invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

18. **Representations**. Each signatory represents this Agreement has been read by the Party for which this Agreement is executed and that such Party has had an opportunity to confer with its counsel.

19. **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

20. **Assignment**. This Agreement is not assignable by Licensee without the express written consent of Licensor.

21. **Indemnification**. The Parties agree that the Indemnity provisions set forth in Paragraph 7 herein are conspicuous, and the Parties have read and understood the same.

22. **Waiver**. Waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance.

23. **Sovereign Immunity**. The Parties hereto agree that Licensor has not waived its sovereign immunity by entering into and/or performing its obligations set forth herein

24. **Reference to Licensee**. When referring to "Licensee" herein, this Agreement shall refer to and be binding upon Licensee, and its officers, directors, partners, employees, representatives, contractors, subcontractors, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, contractors, subcontractors, invitees, volunteers and/or another other third parties for whom such Licensee is legally responsible.

25. **Reference to Licensor**. When referring to "Licensor" herein, this Agreement shall refer to and be binding upon Licensor, and its City Council Members, officers, agents, representatives, employees and/or any other third parties for whom Licensor is legally responsible.

26. **Miscellaneous Drafting Provisions**. This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against either Party shall not apply. Headings in this Agreement are for the convenience of the Parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

LICENSOR:

CITY OF FRISCO, TEXAS,
a Texas home-rule municipality

By: _____
George Purefoy, City Manager

LICENSEE:

HOPE PARK FRISCO,
a Texas not-for-profit foundation

By: _____
Renee Sinclair, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared George Purefoy, known to me to be the person whose name is subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative of the **CITY OF FRISCO, TEXAS**, a Texas home-rule municipality, and that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of the **CITY OF FRISCO, TEXAS**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of March, 2013.

Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Renee Sinclair, known to me to be the person whose name is subscribed to the foregoing instrument; she acknowledged to me that she is the Vice President and duly authorized representative of **HOPE PARK FRISCO**, a Texas nonprofit corporation, and that she executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of **HOPE PARK FRISCO**, pursuant to its Bylaws.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of March, 2013.

Notary Public in and for the State of Texas
My Commission Expires: _____

**EXHIBIT “A”
FORMS OF VOLUNTEER RELEASES**

DRAFT